

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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6	UNITED STATES OF AMERICA,	)	
7	Plaintiff,	)	No. CV-72-3643-JLQ
8	SPOKANE TRIBE OF INDIANS,	)	SPECIAL MASTER'S REPORT AND
9	Plaintiff/Intervenor,	)	RECOMMENDATION TO ACCEPT
10	v.	)	2011 WATER MASTER REPORT AND
11	BARBARA J. ANDERSON, et al.,	)	APPROVE PAYMENT OF WATER
12	Defendants.	)	MASTER'S FEES AND EXPENSES
13		)	

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At the March 21, 2012, hearing for the presentation of the Water Master's 2011 Report (covering October 1, 2010, through September 30, 2011), Water Master James Lyerla appeared and presented the Report. Addressing the court and appearing by telephone were Shannon Work and David Lundgren on behalf of the Spokane Tribe of Indians; David Harder, Department of Justice; Washington State Assistant Attorney General Barbara Munson, for the Washington State Department of Ecology; and Nolan Shishido, Department of the Interior. Also present in the courtroom were John Covert and Guy Gregory, Department of Ecology, and Nick Pemberton. The matter is before the undersigned following referral by Senior Judge Quackenbush. (ECF No. 733.)

Changes to the court's Notice List are recommended; specifically, substitution of counsel Barbara Munson, Assistant Attorney General, as noted on Attachment A. In addition, the Water

SPECIAL MASTER'S REPORT AND RECOMMENDATION TO ACCEPT  
2011 WATER MASTER REPORT AND APPROVE PAYMENT OF  
WATER MASTER'S FEES AND EXPENSES - 1

1 Master advised that Greg Axtell and Jackie Smart are no longer on the  
2 Deed for SW 1/4 of the NE 1/4 of Section 8, T.28N., R.40 E.W.M., and  
3 Roger Harris should be added to the Notice List, as his name now is  
4 on the deed with Paul Schaffner. Mr. Axtell and Ms. Smart shall  
5 timely file an objection to this Report and Recommendation if either  
6 or both disagree with this report from the Water Master. Otherwise,  
7 their names will be removed from the Notice List following the  
8 objection period.<sup>1</sup>

9 As an incorrect phone number appeared on the Water Master's  
10 notice of hearing, if an interested party believes this oversight  
11 resulted in an inability to participate in the March 21, 2012,  
12 hearing, the party shall so note any concerns through the objection  
13 process.

14 Mr. Pemberton expressed various concerns, including the possible  
15 impact of the USGS reports on domestic wells regulation, and  
16 including extensions and delays of the USGS Study. Mr. Work, on  
17 behalf of the Spokane Tribe, expressed the parties' concern that the  
18 USGS Study be performed as completely and professionally as possible.  
19 The hope is that there will be no need for further extensions, but if

20 \_\_\_\_\_  
21 <sup>1</sup> The parties and counsel are reminded that address changes  
22 timely must be given to the Water Master. Address changes made  
23 through CM/ECF docketing additionally are required by counsel of  
24 record, but are not transferred to the Notice List (Attachment A)  
25 without action from counsel. Moreover, the undersigned does not  
26 receive notice of address changes unless and until there is an active  
27 referral order.

1 the best work requires a request for extensions, the Tribe represents  
2 it will support an extension, if needed.

3 **IT IS RECOMMENDED:**

4 1. That the Annual Report of the Water Master, covering the  
5 period of October 1, 2010, to September 30, 2011, be accepted.

6 2. That the Water Master's compensation remain the same as in  
7 previous agreements. Specifically, the Water Master's request for  
8 compensation and expenses be approved, consistent with previous  
9 agreements (\$3,740 quarterly retainer, and a maximum of \$2,500 for  
10 expenses).

11 3. That the Annual Report and fourth quarter billing (July 1,  
12 2011, ending September 30, 2011), as reflected on page 2 of the  
13 Annual Report (total fourth quarter amount billed of **\$4,010.00**  
14 **(\$3,740 retainer, plus \$270 expenses)**, be approved.

15 4. The attached Notice List be adopted as the current Notice  
16 List, subject to the above discussion.

17 **OBJECTIONS**

18 Any party may object to a magistrate judge's proposed findings,  
19 recommendations or report within fourteen (14) days following service  
20 with a copy thereof. Such party shall file with the District Court  
21 Executive and serve on all parties written objections, specifically  
22 identifying the portions to which objection is being made, and the  
23 basis therefor. Any response to the objection shall be filed within  
24 fourteen (14) days after receipt of the objection. Attention is  
25 directed to FED. R. CIV. P. 6(d), which adds additional time after  
26 certain kinds of service.

27 A district judge will make a de novo determination of those

28 SPECIAL MASTER'S REPORT AND RECOMMENDATION TO ACCEPT  
2011 WATER MASTER REPORT AND APPROVE PAYMENT OF  
WATER MASTER'S FEES AND EXPENSES - 3

1 portions to which objection is made and may accept, reject, or modify  
2 the magistrate judge's determination. The judge need not conduct a  
3 new hearing or hear arguments and may consider the magistrate judge's  
4 record and make an independent determination thereon. The judge may  
5 also receive further evidence or recommit the matter to the  
6 magistrate judge with instructions. See 28 U.S.C. § 636(b)(1)(B) and  
7 (C), FED. R. CIV. P. 73, and LMR 4, Local Rules for the Eastern  
8 District of Washington.

9 A magistrate judge's recommendation cannot be appealed to a  
10 court of appeals; only the district judge's order or judgment can be  
11 appealed.

12 The Clerk of the Court shall file this Report and Recommendation  
13 and serve copies of it on Senior Judge Quackenbush, and those parties  
14 listed on the most recently updated Notice List attached to this  
15 Report and Recommendation.

16 DATED March 29, 2012.

17  
18 S/ CYNTHIA IMBROGNO  
19 UNITED STATES MAGISTRATE JUDGE  
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NOTICE LIST

CAUSE NO. CV-72-3643-JLQ

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